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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN GEORGE HADAD,

Defendant and Appellant.

F077125

(Super. Ct. No. CF96561316)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Edward Sarkisian, Jr., Judge.

Connex A. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Amanda D. Cary and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Franson, J. and Smith, J.

Appellant John George Hadad appeals from the trial court's order pursuant to Penal Code section 1026.5¹ extending his civil commitment two years. On appeal, Hadad contends the court abused its discretion in admitting certain evidence.² We affirm.

FACTS

On February 9, 1996, Hadad murdered his wife by shooting her on top of her skull, on the left side of her skull, and through her left cheek. His wife also had a defensive wound on her left hand from a bullet that entered through the top of her wrist and exited through her palm.

On June 17, 1998, a jury found Hadad guilty of voluntary manslaughter (§ 192, subd. (a)) and found true a personal use of a firearm enhancement (§ 12022.5, subd. (a)). On June 19, 1998, the court found Hadad not guilty by reason of insanity (§ 1026), which resulted in his commitment later that year to the California Department of State Hospitals at Patton for a maximum term of 21 years. In 2000, Hadad was transferred to the California Department of State Hospitals—Metropolitan at Norwalk in Los Angeles, County (MSH) for continued treatment.

On May 9, 2017, the Fresno County District Attorney filed a petition to extend Hadad's commitment pursuant to section 1026.5, subdivision (b).

On October 20, 2017, during a hearing on in limine motions, defense counsel objected to the admission of 11 photographs of the murder victim and the crime scene (Exhibits 1–11). Counsel argued the crime scene photographs were of little probative value and were prejudicial because there was a stipulation the victim was shot and died of

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

² Hadad's notice of appeal states that he is also appealing from the trial court's January 23, 2018, denial of his petition pursuant to section 1206.2 for transfer to outpatient status. We do not discuss the court's denial of this petition further because Hadad does not raise any issues regarding that petition.

bullet wounds and police officers could testify to that and to what they saw at the scene. The court took the matter under submission.³

On October 23, 2017, the court ruled that the prosecutor could introduce the following photographs into evidence: (1) Exhibits 1 and 2, photographs of the shower area where the victim was murdered; (2) Exhibit 4, a photograph of the victim's head as she was found in the shower; (3) Exhibit 5, an autopsy photograph of the right side of the victim's face that did not show any wounds; (4) Exhibit 6, an autopsy photograph of the left side of the victim's face that showed the three entrance wounds on the victim's head; (5) Exhibit 9, an autopsy photograph of an entry wound on the victim's left wrist, which indicated it was a defensive wound; (6) Exhibit 10, a photograph of the same injury to the left hand that is not as clear as Exhibit 9; and (7) Exhibit 11, an autopsy photograph of an exit wound on the victim's left palm.⁴ The blood had been cleansed from all the wounds shown in the autopsy photographs.

On October 25, 2017, at a hearing on the petition, the prosecutor introduced evidence of the underlying offense primarily through officers who responded to the scene of the murder. Dr. Dmitriy Sherman then testified that he was a staff psychiatrist at MSH and had been Hadad's treating psychiatrist at the hospital for approximately five or six years. Sherman diagnosed Hadad, who was then 63 years old, as suffering from chronic schizophrenia, which he described as a psychotic disorder that causes distorted thinking, paranoia, auditory and visual hallucinations, and delusions. Hadad acknowledged killing his wife because he believed she might be poisoning him and

³ During argument on their admission, the people withdrew Exhibit 7, which showed "a peel-back of the victim's face showing where the entry wounds actually occurred in relationship to the skull" and Exhibit 8, which showed the autopsy doctor's hand holding a round that was removed from the victim with the "peel-back" visible behind the hand.

⁴ The court excluded Exhibit 3, a photograph of the victim lying on the shower floor after she had been executed.

sexually abusing their children. However, according to Sherman, he did not have a good understanding of what led him to murder his wife and he was not able to connect his symptoms of paranoia and his mental illness.

Hadad denied hallucinating, but Sherman did not find him to be an honest or trustworthy reporter of his condition. Sherman, however, could not state whether Hadad continued to experience hallucinations because even though he would be observed preoccupied in deep thought, it was unclear whether he was hallucinating and Hadad was vague in reporting symptoms relating to hallucinations.

In January 2017, Hadad admitted to Sherman that he still believed he was the son of God, that he was able to communicate telepathically with people in Syria and Europe and that they could see and hear what he saw and heard. Hadad also still had a fixed belief that his wife may have deserved being murdered because she may have been poisoning him and abusing their children.

Hadad was treated with Zyprexa, an antipsychotic medication, for a long time, which helped him with his symptoms of schizophrenia by decreasing his hallucinations and clearing his mind. However, hospital staff had trouble with Hadad taking Olanzapine, which is the same drug as Zyprexa, because he thought it was not good for him. This resulted in the staff having to tell Hadad he was taking Zyprexa for him to take the Olanzapine.

Staff also had problems with Hadad submitting to medical treatment because Hadad did not have the ability to make the connection between the information he was provided and the outcome of his medical condition. This was mostly due to Hadad's schizophrenia and was manifest when Hadad was diagnosed with glaucoma, which put him at risk of losing his eyesight. Initially, Hadad refused treatment that consisted only of eyedrops that would control the glaucoma. Hadad's stated reason for refusing treatment was that he did not need it and that everything was in God's hands. This required the hospital to apply for a conservatorship in order to obtain a court order

allowing the hospital to treat him. Nevertheless, Hadad was caught on multiple occasions with the eye drops on his cheeks, although lately this behavior had subsided. This conduct caused Sherman to be substantially concerned whether Hadad would take his medication if he were not supervised.

Hadad was also diagnosed with stage one prostate cancer. Even though the significance of medication and medical treatment was explained to Hadad by several staff, Hadad was unable to connect the information provided and the consequences of refusing treatment. This required the hospital to go through the same procedure of getting a judge to authorize involuntary treatment.

Sherman further testified that patients at MSH attend recovery groups where they prepare recovery plans and learn about their mental illness and coping skills for when they are discharged into the community. Recovery groups are part of the transition program because if patients can recognize and adapt these skills, they can one day live outside of MSH. Hadad attended only about 75 percent of the recovery group sessions and he did not participate in those he did attend.⁵ Consequently, Hadad's attendance at recovery groups provided minimal benefit to Hadad in reaching his goal of rehabilitation and "recognizing" his mental illness. Haddad's failure to participate in group sessions occurred despite hospital staff encouraging him to participate and their attempts at educating him about the importance of participation to obtain outpatient status.

Sherman testified that a precursor is a condition that occurs when a patient with mental illness begins experiencing symptoms that slowly increase in intensity. For example, some patients become restless, lose sleep, or become uncooperative in their treatment before they start hallucinating. Although some patients can recognize their precursors before they develop full blown hallucinations, Hadad could not.

⁵ Hadad would either just sit there or, if he became involved in a group, he would get irritated and refuse to participate further.

Sherman also testified that a relapse prevention plan consists of concrete steps patients take to prevent future exacerbation of their mental illness. For example, if a patient feels bad, he will call his doctor or if he feels unusual he will call his social worker. Although Hadad tried to develop a relapse prevention plan, he had not been able to formulate even some simple steps of such a plan. Without a relapse plan a patient could not be relied on to take his medication or recognize the need for it.

According to Sherman, although Hadad superficially stated that he had a mental illness, he had difficulty making a connection between his mental illness, his symptoms, and his commitment offense. Hadad did not recognize his dangerousness to others, had a limited awareness of his possible responsibility for his actions, and at times still stated that his wife possibly deserved her fate because she was poisoning him and abusing their children.

Sherman further testified there were two components to Hadad's current dangerousness, his chronic mental illness with delusions and command auditory hallucinations and his personality trait of stubbornness. This prevented Hadad from processing information and making reasonable plans for a slow transition to outpatient status. Although Hadad took his psychotropic medication because he was confined at the hospital, he might stop taking it if not supervised. This would result in a high probability that he would quickly decompensate and his lack of awareness of precursors might cause him to become dangerous quickly without treatment, supervision and psychotropic medication. Thus, according to Sherman, because of Hadad's lack of awareness between the relationship of his symptoms and his dangerous behavior, his lack of a relapse plan, and his inability to identify his precursors or to activate coping strategies, Hadad was at a great risk of decompensating within a short time span and of becoming aggressive and reoffending. However, he explained that the dangerous behavior that resulted in his wife's murder was due to Hadad acting on his delusions.

Hadad testified that he was aware he had a diagnosis of schizophrenia and that was why he took medication. He was also aware of the incident that resulted in him being confined at the hospital. According to Hadad, he shot his wife because of “the pressure in his mind” and he was very sad that he did. The treatment at the hospital had helped him and, if released to the community, he would continue to take his medication, see a doctor and follow the doctor’s orders. Hadad believed it would be important to continue seeing a doctor because the doctor could help him forget the noises and this would help him sleep. He would continue to take his medication because he was afraid if he did not he would begin to hear noises and he realized he had to take medication to stay healthy. Hadad “would be friendly to everyone” if he was released from the hospital. If he felt sick, he would see a doctor immediately. He believed he had learned skills at the hospital to stay healthy if he were released.

On cross-examination Hadad testified that he heard voices about 10 minutes before he killed his wife but that he stopped hearing voices after he started taking medication. Additionally, he admitted telling Sherman on January 5, 2017, that he regularly heard people talking in his head, that he could connect to them anywhere in Syria, Europe and elsewhere and that he could “feel even the smell [*sic*] and how they talk[ed] to [him].” Hadad also told Sherman on that date that he did not “feel any problems” and was not sick. Hadad claimed taking Olanzapine prevented him from sleeping and made his fingers and feet peel and bleed.

Sherman testified in rebuttal that Hadad never mentioned experiencing side effects from taking Olanzapine. None of Hadad’s testimony affected Sherman’s opinion that, even though he takes medication, Hadad was a dangerous person who suffered from a mental disorder.

On October 26, 2018, the jury found that Hadad currently posed a substantial danger to others as a result of a mental disease, defect, or disorder. The following day,

based on the jury's finding, the court ordered Hadad's involuntary commitment extended two years.

DISCUSSION

Introduction

Hadad contends the photographs of the victim and the crime scene were not relevant because the testimony from responding officers was sufficient to establish the circumstances of the murder and jurors would understand that someone shooting someone with a gun was a dangerous act, especially if the person died. He further contends the photographs only served to evoke in the jurors an emotional bias against him and "create[d] a cumulatively prejudicial impact of a matter not in dispute." Thus, according to Hadad, because the prejudicial effect of the photographs outweighed their probative value, the court abused its discretion when it allowed the prosecutor to introduce them into evidence. We disagree.

The Photographs were Relevant

"In determining the admissibility of ... photographic evidence, we apply well-established rules. Only relevant evidence is admissible [citations], and, except as otherwise provided by statute, all relevant evidence is admissible[.] [Citations.] Relevant evidence, defined in Evidence Code section 210 as evidence ' "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action," ' tends ' "logically, naturally, and by reasonable inference" to establish material facts such as identity, intent, or motive. [Citations.]' [Citation.] The trial court has broad discretion in determining the relevance of evidence [citations], but lacks discretion to admit irrelevant evidence." (*People v. Crittenden* (1994) 9 Cal.4th 83, 132 (*Crittenden*).)

"A person found not guilty of a felony by reason of insanity may be committed to a state hospital for a period no longer than the maximum prison sentence for his or her offense or offenses (... § 1026.5, subd. (a)), but the commitment may be extended if,

because of mental disorder, the person ‘represents a substantial danger’ to others (*id.*, subd. (b)(1)).” (*Hudec v. Superior Court* (2015) 60 Cal.4th 815, 818.)

In 1996, Hadad suffered from chronic schizophrenia that caused him to become delusional and brutally murder his wife by shooting her three times in the head because he believed she was poisoning him and sexually molesting their children. In 1998, he was found not guilty by reason of insanity of manslaughter and he was committed to the California Department of State Hospitals at Patton and subsequently transferred to MSH, where he remained through the date of the hearing in this matter. Although Hadad had never been violent while committed, he required psychotropic medication to keep his symptoms of schizophrenia under control and to prevent him from becoming dangerous. The photographs were relevant to show the extreme danger Hadad posed if he were unable to control the symptoms of his mental disorder and the potential brutal manner in which that danger could manifest itself if Hadad were released from his secure placement at MSH before he was adequately prepared. “The prosecutor ‘ “was not obliged to prove these details solely from the testimony of live witnesses” [citation] or to accept antiseptic stipulations in lieu of photographic evidence.’ ” (*Crittenden, supra*, 9 Cal.4th at p. 133.) Thus, the jury was entitled to see the physical details of the callous way Hadad murdered his wife in order to fully comprehend the gravity of the threat of physical harm he posed if he were out in the community and not able to control the symptoms of his mental disorder. (*Ibid.*) Accordingly, we reject Hadad’s contention that the photos introduced into evidence were not relevant.

The Court did not Abuse its Discretion in Admitting the Challenged Photos

Evidence Code section 352 provides:

“The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”

“The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. [Citations.] The court’s exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect.” (*Crittenden, supra*, 9 Cal.4th at pp. 133–134.)

“ ‘Evidence is not prejudicial, as that term is used in [an Evidence Code] section 352 context, merely because it undermines the opponent’s position or shores up that of the proponent. The ability to do so is what makes evidence relevant. The code speaks in terms of *undue* prejudice. *Unless the dangers of undue prejudice, confusion, or time consumption* “ ‘substantially outweigh’ ” *the probative value of relevant evidence, [an Evidence Code] section 352 objection should fail.* [Citation.] “ ‘The “prejudice” referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual *and which has very little effect on the issues.*’ ” ’ ” (*People v. Doolin* (2009) 45 Cal.4th 390, 438–439, second and third italics added.)

Photographs of murder victims are always disturbing. (*Crittenden, supra*, 9 Cal.4th at p. 134.) The photographs, here, however, were not unduly shocking or inflammatory because only five photographs of the victim’s wounds were introduced into evidence and only two photographs showed the wounds to her head. Further, as noted above, the photographs were highly probative because they allowed the jury to fully appreciate the extreme danger Hadad posed if the symptoms of his mental disorder were not controlled with medication. Thus, we conclude that the court did not abuse its discretion when it allowed the prosecutor to introduce into evidence the nine photographs at issue.

Admission of the Photographs did not Prejudice Hadad

“Absent fundamental unfairness, [which is not present here,] state law error in admitting evidence is subject to the traditional *Watson*^[6] test: The reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error.” (*People v. Partida* (2005) 37 Cal.4th 428, 439.)

Hadad had been confined in state hospitals since 1998 for the brutal murder of his wife while in a delusional state caused by his chronic schizophrenia. To extend his commitment, the prosecutor had to show Hadad continued to be a danger to others because of his mental disorder. Although Hadad’s symptoms had largely been controlled with medication, Hadad still believed his wife tried to poison him and sexually abused their children and that he was justified in killing her. On January 5, 2017, approximately 11 months prior to the hearing on the petition, Hadad still heard people speaking in his head and telling Hadad, among other things, that he was the son of God. He also told Sherman on that date that he did not “feel any problems” and was not sick.

It is clear from the record that medication was essential for Hadad to control the symptoms of his schizophrenia. However, during his commitment to MSH, hospital staff had to obtain court orders to treat him for glaucoma and prostate cancer, and they had to fool him to get him to take medication for his schizophrenia. Additionally, Hadad received little benefit from his group sessions because he attended infrequently or did not participate. Consequently, Hadad did not have a relapse plan or any coping skills, he could not recognize his precursors, and he did not understand the relationship between his mental illness, his symptoms, and his commitment offense.

Although Hadad testified he would continue to take his medication if released into the community, this claim was belied by the circumstances discussed above and his failure to provide any expert testimony in support of this claim. Thus, alternatively `we

⁶ *People v. Watson* (1959) 46 Cal.2d 818.

conclude that any error in admitting the photographs at issue was harmless because it is not reasonably probable the jury would have found Hadad was not a danger to others even if the court had not admitted them.

DISPOSITION

The order is affirmed.